United Nations A/CN.4/535

General Assembly

Distr.: General
27 May 2003
English
Original: English/French

International Law Commission
Fifty-fifth session
Geneva, 5 May-6 June and 7 July-8 August 2003

Eighth report on reservations to treaties

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03-39177 (E) 020703 090703

Note: **This report was drafted entirely in French, although some quotations (translated into French by the Special Rapporteur, for which he is solely responsible) are reproduced in their original language.**

Introduction

1. The seventh report on reservations to treaties presents a concise summary of the Commission's earlier work on the subject.[1] This seemed appropriate since the Commission was entering a new five-year period. As in the earlier reports, it will be sufficient this year to summarize briefly the lessons which can be drawn from the consideration of the seventh report both by the International Law Commission itself and by the Sixth Committee of the General Assembly and to give a concise account of the main developments with regard to reservations that occurred during the past year and were brought to the attention of the Special Rapporteur, before proceeding with a general presentation of this report.

A. Seventh report on reservations to treaties and the outcome

1. Consideration of the seventh report by the Commission

2. At its fifty-fourth session the Commission adopted the draft guidelines submitted in the sixth report of the Special Rapporteur,[2] and a draft submitted in the first part of the seventh report,[3] which had been referred to the Drafting Committee in 2001[4] and at the beginning of the fifty-fourth session[5] with the commentaries pertaining thereto.[6]

3. In spite of their number (12), these guidelines deal only with the formulation of reservations and interpretative declarations. They are far from covering all the questions which should be covered in Part II of the Guide to Practice (Formulation and withdrawal of reservations, acceptances and objections) pursuant to the "provisional plan of the study" which the Special Rapporteur proposed in his second report[7] and which has been followed consistently since then.

4. The seventh report strove to fill some of these gaps by presenting a set of draft guidelines dealing with the form and procedure for the withdrawal of reservations, with the exception, however, of the rules applying to unilateral declarations by which a State or an international organization seeks to enlarge the scope of previous reservations. These drafts were referred to the Drafting Committee[8] with the

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[1] A/CN.4/526, paras. 2-47.
[2] A/CN.4/518/Add.1 and 2.
[3] Draft guideline 2.1.7 bis, A/CN.4/526, para. 46.
[4] *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10* (A/56/10), para. 155.
[5] Ibid., *Fifty-seventh session, Supplement No. 10* (A/57/10), para. 49.
[6] Ibid., para. 103, pp. 50-119.
[7] A/CN.4/477, para. 37; this plan is also reproduced in the seventh report (A/CN.4/526, para. 18).
[8] *Official Records of the General Assembly, Fifty-seventh session, Supplement No. 10* (A/57/10), para. 101.

exception of those dealing with the withdrawal of reservations held to be impermissible by a body monitoring the implementation of a treaty.[9]

5. With regard to the latter issue, some members of the Commission felt that the first subparagraph of the draft or drafts in question stated the obvious, while the second implied that the findings of monitoring bodies had a binding effect. Although he was unconvinced by these arguments (and remains so), the Special Rapporteur, recognizing that the consideration of this draft — which dealt mainly with the powers of monitoring bodies with regard to impermissible reservations — was probably premature, withdrew it.[10]

6. Owing to lack of time, the Drafting Committee was unable to consider the draft guidelines referred to it; it will need to do so during the fifty-fifth session.

2. Consideration of chapter IV of the report of the Commission in the Sixth Committee

7. Chapter IV of the report of the Commission on the work of its fifty-fourth session is devoted to reservations to treaties. A very brief summary of the topic is provided in chapter II[11] and the "specific issues on which comments would be of particular interest to the Commission" are set out in chapter III. As regards reservations to treaties, the Commission posed two questions to States.[12]

8. The first question arose in the context of the second reading of the draft Guide to Practice (as it is not possible to review drafts already adopted from one year to the next). It dealt with paragraph 4 of draft guideline 2.1.6 adopted on first reading in 2002, which reads as follows:

> "Where a communication relating to a reservation to a treaty is made by electronic mail or facsimile, it must be confirmed by diplomatic note or depositary notification. In this case, the communication is considered as having been made on the date of the electronic mail or facsimile."[13]

The Commission wished "to know whether this provision reflects the usual practice and/or seems appropriate".

9. Many delegations replied to this question, which may seem minor, but which is of considerable practical importance. The vast majority approved the provisions of

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[9] Draft guidelines 2.5.4 and 2.5.11 bis, which the Special Rapporteur had suggested should be combined in a draft guideline 2.5.X; see the seventh report (A/CN.4/526/Add.2, paras. 106-114; A/CN.4/526/Add.3, paras. 213-216). Draft guideline 2.5.X reads as follows:

"The fact that a reservation is found impermissible by a body monitoring the implementation of a treaty to which the reservation relates does not constitute the withdrawal of that reservation.

Following such a finding, the reserving State or international organization must take action accordingly. It may fulfil its obligations in that respect by totally or partially withdrawing the reservation."

[10] See the summary of the debate and the Special Rapporteur's conclusions in *Official Records of the General Assembly, Fifty-seventh session, Supplement No. 10* (A/57/10), paras. 71-76 and 95-100.

[11] Ibid., para. 14. The Special Rapporteur continues to have the greatest doubts as to the utility of these "summaries" which are scarcely informative and risk giving harried readers a poor excuse for not consulting the relevant chapters.

[12] Ibid., para. 26.

[13] Ibid., p. 94.

draft guideline 2.1.6.[14] One delegation suggested that it would be useful to set a time limit for such confirmation;[15] such a specification could indeed be considered, but the question would then arise of the consequences of not observing the time limit. Other delegations, however, considered that there was no reason for a reservation to produce effects on a date prior to that of receipt of written confirmation by the depositary,[16] while others contested the very principle of notification by electronic mail or facsimile.[17]

10. Broadening the discussion, some delegations suggested that consideration should be given to using modern means of communication for all communications relating to reservations and, more broadly still, to treaties themselves.[18] Others specified that all communications should be made in one of the authentic languages of the treaty.[19]

11. The Commission further stated that it would "welcome comments by States on [draft guideline 2.5.X]"[20] so that it could take them into account when it again dealt with the question of the fate of reservations held to be impermissible by a body monitoring the implementation of a treaty, when it addressed the question of the consequences of the inadmissibility of a reservation, or when it reconsidered its 1997 preliminary conclusions.

12. Several delegations approved the withdrawal of the draft at the current stage and felt that the Commission should revert to the questions posed therein when it considered the issues relating to the admissibility of reservations.[21] Others felt that the withdrawal of a reservation was a sovereign right of States,[22] unrelated to the activities of monitoring bodies,[23] and asked what conduct States should adopt following a finding by a monitoring body that a reservation was impermissible, while stressing that the withdrawal of the reservation was only one of the

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[14] Cf. the views of Australia (which indicated that the draft reflected its practice — A/C.6/57/SR.23, para. 72), Belarus (A/C.6/57/SR.24, para. 57), Chile (A/C.6/57/SR.27, para. 6), China (A/C.6/57/SR.24, para. 35), Cyprus (A/C.6/57/SR.22, para. 6), Republic of Korea (which stated, however, that the draft did not reflect its usual practice — A/C.6/57/SR.26, para. 67), Greece (ibid., para. 26), Israel (A/C.6/57/SR.21, para. 57), Italy (A/C.6/57/SR.23, para. 3), Jordan (A/C.6/57/SR.25, para. 46), Nigeria (A/C.6/57/SR.26, para. 83), Sierra Leone (A/C.6/57/SR.24, para. 51) and Sweden on behalf of the Nordic countries (A/C.6/57/SR.22, para. 84). The delegation of the Russian Federation was more reticent in its approval (A/C.6/57/SR.23, para. 66). Once again, the Special Rapporteur regrets that the summaries were sent to him in English only.

[15] Israel (A/C.6/57/SR.21, para. 57).

[16] In this connection, see the views of Chile (A/C.6/57/SR.27, para. 8), the Russian Federation (A/C.6/57/SR.23, para. 67) or Sweden (A/C.6/57/SR.22, para. 84).

[17] Cf. United States of America (A/C.6/57/SR.31, para. 51) and, to a lesser extent, New Zealand (A/C.6/57/SR.23, para. 29).

[18] Cf. Chile (A/C.6/57/SR.27, para. 6).

[19] Cf. the views of Austria (A/C.6/57/SR.22, para. 76).

[20] See footnote 9, supra.

[21] Cf. Israel (A/C.6/57/SR.21, para. 58), Jordan (A/C.6/57/SR.25, para. 46), New Zealand (A/C.6/57/SR.23, para. 28), Sweden (A/C.6/57/SR.22, para. 83). Against: Belarus (A/C.6/57/SR.24, para. 57).

[22] Cf. Algeria (A/C.6/57/SR.26, para. 40), China (A/C.6/57/SR.24, para. 34), Republic of Korea (A/C.6/57/SR.26, paras. 68-69), Israel (A/C.6/57/SR.21, para. 58), Japan (A/C.6/57/SR.25, para. 40).

[23] Cf. Israel (A/C.6/57/SR.21, para. 58).

possibilities to be considered.[24] Several delegations drew attention to the various powers of the bodies in question[25] and stressed that, in principle, they did not have the competence to judge the admissibility of reservations;[26] others, however, felt that the reserving State had an obligation to reconsider its position in good faith in the light of the findings of the monitoring body.[27] One delegation stressed its attachment to the 1997 preliminary conclusions.[28]

13. The other draft guidelines adopted by the Commission at its fifty-fourth session were generally approved and elicited relatively few comments,[29] some of which, however, are highly useful and will not fail to be taken into consideration by the Commission when it takes up its consideration of the draft Guide to Practice on second reading.

14. Numerous comments were made, however, on the role of the depositary and, more specifically, on draft guideline 2.1.8 on "Procedure in case of manifestly [impermissible] reservations".[30] Generally speaking, and despite some opinions to the contrary,[31] the delegations which intervened on this issue expressed their attachment to the purely mechanical role conferred on the depositary by the Vienna Conventions[32] and their hesitations concerning the possibility afforded to the depositary of drawing the attention of the author of the reservation to what is, in his view, the manifestly impermissible character of the reservation.[33]

15. Moreover, as usual, some speakers outlined the positions of their Government on general issues relating to the "right of reservations".[34]

16. One such issue which drew the most attention is that of conditional interpretative declarations.[35] Several delegations expressed the view that they should be treated in the same manner as reservations and that the draft guidelines devoted to them should be abandoned.[36] In so doing, they shared the concerns of some members of the Commission. In accordance with the position outlined in the seventh report,[37] it is very likely that there is no need for the legal regime applying to conditional interpretative declarations to differ from the regime applying to reservations; nevertheless, the Commission will take a final position in this regard

[24] Cf. France (A/C.6/57/SR.22, para. 91).
[25] Cf. China (A/C.6/57/SR.24, para. 33).
[26] Cf. Jordan (A/C.6/57/SR.25, para. 46), United Kingdom (A/C.6/57/SR.23, para. 33) and the Russian Federation (A/C.6/57/SR.23, para. 64).
[27] Cf. Switzerland (A/C.6/57/SR.25, para. 34).
[28] Cf. Japan (A/C.6/57/SR.25, para. 40). Against: Greece (A/C.6/57/SR.26, para. 27).
[29] See the still valuable topical summary prepared by the Secretariat (A/CN.4/529, paras. 85-91 and 101-102).
[30] See ibid., paras. 61-72.
[31] See, for example, the views of Chile (A/C.6/57/SR.27, para. 4) and Romania (A/C.6/57/SR.23, para. 48).
[32] See Australia (A/C.6/57/SR.23, para. 74), Brazil (A/C.6/57/SR.24, para. 67), China (ibid., para. 32), Republic of Korea (A/C.6/57/SR.26, para. 66), Cuba (ibid., para. 60), Islamic Republic of Iran (A/C.6/57/SR.23, para. 5), Israel (A/C.6/57/SR.21, para. 59), Jordan (A/C.6/57/SR.25, para. 45), Nigeria (A/C.6/57/SR.26, para. 82).
[33] Cf. Israel (A/C.6/57/SR.21, para. 59).
[34] See the topical summary, A/CN.4/529, paras. 50-60.
[35] See ibid., paras. 81-84.
[36] Cf. Japan (A/C.6/57/SR.25, para. 40), Netherlands (A/C.6/57/SR.23, para. 11), United Kingdom (ibid., para. 34), Switzerland (A/C.6/57/SR.25, para. 33).
[37] A/CN.4/526, para. 43.

only after deciding on the issues relating to the permissibility of reservations and interpretative declarations and their effects. In the meantime, the Special Rapporteur will continue to pose questions concerning the rules applying to conditional interpretative declarations.

B. Recent developments with regard to reservations to treaties

17. During its fifty-fourth session, the Commission requested its Chairman and the Special Rapporteur on reservations to treaties to contact the human rights monitoring bodies in an effort to increase exchanges of views on the topic of reservations to human rights treaties.[38] To that end, letters[39] co-signed by the Chairman and the Special Rapporteur were sent on 13 August 2002 to the chairpersons of the following bodies:

- Human Rights Committee;
- Committee on Economic, Social and Cultural Rights;
- Committee on the Elimination of Racial Discrimination;
- Committee on the Elimination of Discrimination against Women;
- Committee on the Rights of the Child;
- Committee against Torture

and to the Chairman of the Sub-Commission on the Promotion and Protection of Human Rights and to Ms. Françoise Hampson, who has been entrusted by the Sub-Commission with the preparation of a working paper on reservations to human rights treaties. A copy of the preliminary conclusions adopted by the Commission in 1997 was again[40] attached to these letters.

18. Thus far, only one reply has been received; in a letter received by the secretariat on 28 March 2003, the Chairman of the Committee on the Elimination of Racial Discrimination transmitted the preliminary opinion of the Committee on the issue of reservations to treaties on human rights, as revised on 13 March 2003. In addition, a joint meeting with the members of the Committee against Torture is planned for the beginning of the Commission's current session so that an exchange of views can be held on this topic. The Special Rapporteur strongly hopes that the members of the Committee on Economic, Social and Cultural Rights, which he believes is also meeting in Geneva during this period, will also be able to participate in this meeting; to that end, he has asked the Commission's secretariat to contact the Committee's secretariat. It would be useful to schedule similar meetings with the other universal human rights bodies.

19. Only a very brief commentary on the particularly stimulating document which the Chairman of the Committee on the Elimination of Racial Discrimination

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[38] See *Official Records of the General Assembly, Fifty-seventh session, Supplement No. 10* (A/57/10), paras. 53-54 and 67.

[39] The text of the model letter is reproduced in the annex to the present report.

[40] This document had first been sent to the human rights bodies shortly after its adoption. Replies were few and rather thinly argued. On these replies, see the third report on reservations to treaties (A/CN.4/491, paras. 15-16) and the fifth report (A/CN.4/508, paras. 10-15).

transmitted can be included in this report.[41] The document begins by stating that the International Convention on the Elimination of All Forms of Racial Discrimination provides a specific mechanism for determining the compatibility of a reservation with the object and purpose of the Convention[42] but that this mechanism had proved inoperative. Interestingly, however, the document also notes that, in practice, States hardly ever invoke their (generally old) reservations during the Committee's consideration of periodic reports.

20. The Committee makes the extremely significant statement that when considering the reports of States parties, it has better things to do than "opening a legal struggle with all the reservation States and insisting that some of their reservations have no legal effect ... which could distract the Committee from its main task" of promoting, to the extent possible, "a complete and uniform application of the Convention, and could distract States parties from issues concerning its implementation. A fruitful dialogue between the reservation State and the Committee may be far more beneficial for promoting the implementation of the Convention by the respective State".

21. These extremely sensible views confirm the impression that can be formed from the report prepared by the Secretariat at the request of the Committee on the Elimination of Discrimination against Women and submitted to the Committee at its twenty-fifth session in 2001:[43] the human rights treaty bodies reviewed are more anxious to engage in a dialogue with the States authors of the reservations to encourage them to withdraw the reservations when these appear to be abusive rather than to rule on their impermissibility.[44]

22. The Special Rapporteur has no knowledge of other important recent developments in the matter of reservations during 2002. In particular, it appears that the Committee on the Elimination of Discrimination against Women did not resume its discussion of the question of reservations to treaties at its twenty-sixth, twenty-seventh or twenty-eighth sessions.

23. At its twenty-third session (4 and 5 March 2002), however, the Committee of Legal Advisers on Public International Law (CADHI) of the Council of Europe decided to enlarge the scope of the European Observatory on Reservations to International Treaties to include treaties relating to the fight against terrorism.[45] As part of its role as an observatory of reservations, CAHDI has continued its consideration of declarations and reservations to international treaties and has begun to consider those relating to treaties concluded outside the Council of Europe.[46]

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[41] Preliminary opinion of the Committee on the Elimination of Racial Discrimination on the issue of reservations to treaties on human rights (CERD/C.62/Misc.20/Rev.3) of 13 March 2003.

[42] Under article 20, a reservation is held to be incompatible with the object and purpose of the Convention if at least two thirds of the States parties object to it.

[43] CEDAW/C/2001/II/4.

[44] See the seventh report on reservations to treaties (A/CN.4/526), para. 50.

[45] See the document prepared by the Secretariat Directorate General of Legal Affairs of the Council of Europe for the twenty-fifth meeting of CAHDI (CAHDI (2002) 11 rev.), and the report on the twenty-fourth meeting of CAHDI, held in Bratislava on 9 and 10 September 2002 (Secretariat memorandum drafted by the Directorate General of Legal Affairs (CAHDI (2002) 16), paras. 23-29.

[46] Ibid., paras. 14-22; see also the list of outstanding reservations and declarations to international treaties, prepared for the twenty-fifth meeting of CAHDI held in Strasbourg on 17 and 18 March 2003 (CAHDI (2003) 2).

24. It should also be noted that on 4 July 2001, the Grand Chamber of the European Court of Human Rights delivered a judgement which the Special Rapporteur did not mention in his previous report, but which raises an interesting question concerning reservations.[47] The application was brought by several Moldovan nationals who had been sentenced to death or to terms of imprisonment by the "Supreme Court of the Moldovan Republic of Transdniestria"; the application was brought against the Russian Federation and the Republic of Moldova. In ratifying the European Convention on Human Rights, Moldova had declared that it would be unable to guarantee compliance with the provisions of the Convention in respect of omissions and acts committed by the organs of the self-proclaimed Trans-Dniester Republic within the territory actually controlled by such organs, until the conflict in the region was finally definitively resolved.

25. In considering the difficult issue of its competence and of the admissibility of the application, the Court enquired into the nature of this declaration; the Moldovan Government maintained that it had to be interpreted as a reservation within the meaning of the present article 57 (formerly article 64) of the European Convention. Noting that "Moldova's declaration does not refer to any particular provision of the Convention" and that it "does not refer to a specific law in force in Moldova", the Grand Chamber concluded that "the aforementioned declaration cannot be equated with a reservation within the meaning of the Convention, so that it must be deemed invalid". Prima facie, this position appears incompatible with draft guideline 1.1.3, which the Commission adopted in 1998.[48] However, insofar as the Court refers exclusively to the specific provisions of article 57 of the European Convention, it might be excessive to draw overly categorical conclusions.

26. On 13 August 2002, at the fifty-fourth session of the Sub-Commission on the Promotion and Protection of Human Rights, Ms. Hampson presented a preparatory working paper[49] the annex to which included a chart (hardly going beyond the information contained in publication "Multilateral Treaties Deposited with the Secretary-General") showing the reservations to the six United Nations human rights treaties. In its resolution 2001/17 of 16 August 2001, adopted without a vote, the Sub-Commission took note of Commission on Human Rights decision 2001/113 of 25 April 2001 and decided to entrust Ms. Françoise Hampson with the task of preparing an expanded working paper on reservations to human rights treaties and of submitting it to the Sub-Commission at its fifty-fourth session. The Commission on Human Rights makes no mention of the matter in its resolution 2003/59 of 24 April 2003 on the work of the Sub-Commission.[50] Ms. Hampson did not reply to the letter dated 13 August 2003 from the Chairman of the International Law Commission and the Special Rapporteur; however, the meeting of the Sub-Commission in Geneva, which will partly overlap with the second part of the International Law

[47] Application No. 48787/99, *Ilie Ilaşcu et al. v. Moldova and the Russian Federation*.

[48] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 10* (A/53/10), p. 206. Draft guideline 1.1.3 on "Reservations having territorial scope" states that "a unilateral statement by which a State purports to exclude the application of a treaty or some of its provisions to a territory to which that treaty would be applicable in the absence of such a statement, constitutes a reservation".

[49] E/CN.4/Sub.2/2002/34 of 8 August 2002.

[50] On previous "episodes" of the difficult relations between the Commission on Human Rights and the Sub-Commission regarding this plan, see the sixth report on reservations to treaties (A/CN.4/518), paras. 21-27, and the seventh report (A/CN.4/526), paras. 52-53.

Commission's session, might provide an opportunity for an exchange of views between the two bodies.

27. The Special Rapporteur also wishes to inform the members of the Commission that in early May 2003, he finally received from the Legal Service of the European Commission a reply to section I of the questionnaire on reservations.[51] He welcomes this development and thanks the authors; he is convinced that this carefully prepared document will be of great help to him in his continued work. The cover letter states that the Legal Service's replies to section II of the questionnaire are forthcoming, and he awaits them with the greatest impatience.

28. The Special Rapporteur again urges the members of the Commission and any reader of this report to kindly provide him with any information on recent developments with regard to reservations to treaties which may have escaped him.

C. General presentation of the eighth report

29. As has too often been the case, the Special Rapporteur has been unable to cover in his seventh report all the objectives which he had set himself.[52] Thus, the first task will be to complete the section of the Guide to Practice on "Procedure" with regard to reservations.

30. The first chapter of the report will therefore endeavour to conclude the study on the modification of reservations and interpretative declarations by considering first the issue of modifications to reservations which enlarge their scope and then that of changes to interpretative declarations.

31. Chapter II will be devoted to the procedure for formulating acceptances of reservations and chapter III to the formulation of objections.

32. If time permits, the Special Rapporteur plans to include a fourth chapter on the basic problems which he sees in connection with the "permissibility" or "validity" of reservations.[53]

I. Withdrawal and modification of reservations and interpretative declarations (continuation and end)

33. Most of the seventh report on reservations to treaties was devoted to a consideration of withdrawal and modification of reservations.[54] Two questions remained to be examined:

- Enlargement of the scope of a reservation; and

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[51] On this questionnaire, see the seventh report (A/CN.4/526), para. 17. The reply from the Commission of the European Communities brings the number of international organizations which have replied to the questionnaire to 25; once again, the Special Rapporteur thanks them. There has been no new response from States since last year.

[52] A/CN.4/526, paras. 56-59.

[53] On the problems raised by the use of these terms, which the Commission has decided to set aside for the moment, see paragraph (7) of the commentary on draft guideline 2.1.8 in *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), p. 114.

[54] A/CN.4/526/Add.2 and 3, paras. 61-221.

- Withdrawal and modification of an interpretative declaration — if the notion makes sense.

The purpose of this chapter is to fill those gaps.

A. Enlargement of the scope of reservations

34. As stated in the seventh report:

> "The question of the modification of reservations should be posed in connection with the questions of withdrawal and late formulation of reservations. Insofar as a modification is intended to lessen the scope of a reservation, what is involved is a partial withdrawal of the 'initial reservation'[55], which poses no problem in principle, being subject to the general rules concerning withdrawals, as set forth above ...[56] If, on the other hand, the effect of the modification is to strengthen an existing reservation, it would seem logical to start from the notion that what we are dealing with is the late formulation of a reservation, and to apply to it the rules applicable in this regard ..."[57]

35. Those rules are set forth in draft guidelines 2.3.1 to 2.3.3 adopted in 2001:

> "2.3.1 *Late formulation of a reservation*[58]
>
> "Unless the treaty provides otherwise, a State or an international organization may not formulate a reservation to a treaty after expressing its consent to be bound by the treaty except if none of the other contracting parties objects to the late formulation of the reservation.
>
> "2.3.2 *Acceptance of late formulation of a reservation*[59]
>
> "Unless the treaty provides otherwise or the well-established practice followed by the depositary differs, late formulation of a reservation shall be deemed to have been accepted by a contracting party if it has made no objections to such formulation after the expiry of the 12-month period following the date on which notification was received.

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[55] While the expression "initial reservation" is used for convenience, it is improper; it would be more accurate to speak of a reservation "as it was initially formulated". As its name indicates, a "partial withdrawal" does not substitute one reservation for another, but rather one formulation for another.

[56] This led the Special Rapporteur to propose the following wording for a draft guideline 2.5.11:

> "The partial withdrawal of a reservation is subject to respect for the same formal and procedural rules as a total withdrawal and takes effect in the same conditions.
>
> "The partial withdrawal of a reservation is the modification of that reservation by the reserving State or international organization for the purpose of limiting the legal effect of the reservation and ensuring more completely the application of the provisions of the treaty, or of the treaty as a whole, to that State or that international organization."

[57] A/CN.526/Add.3, para. 185.

[58] For the commentary on this provision, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), pp. 471-489.

[59] See commentary, ibid., pp. 489-493.

"2.3.3 *Objection to late formulation of a reservation*[60]

"If a contracting party to a treaty objects to late formulation of a reservation, the treaty shall enter into or remain in force in respect of the reserving State or international organization without the reservation being established."

36. If, after expressing its consent to be bound, along with a reservation, a State or an international organization wishes to "enlarge" the reservation, in other words, to modify in its favour the legal effect of the provisions of the treaty to which the reservation refers, such provisions shall be fully applicable, for the same reasons:

- It is essential not to encourage the late formulation of limitations on the application of the treaty;
- On the other hand, there may be legitimate reasons why a State or an international organization would wish to modify an earlier reservation, and in some cases it may be possible for the author of the reservation to denounce the treaty in order to re-ratify it with an "enlarged reservation";
- It is always possible for the parties to a treaty to modify it at any time by unanimous agreement;[61] it follows that they may also, by unanimous agreement, authorize a party to modify, again at any time, the legal effect of certain provisions of the treaty, or of the treaty as a whole with respect to certain specific aspects in their application to that party.

37. Practical examples are rare, but the legal literature, to the meagre extent that it deals with the problem, is unanimous on this point.

38. Anthony Aust, for example, states very clearly that "[a] revision which would change the character or scope of the original [reservation] would not be permissible".[62]

39. Jörg Polakiewicz, Deputy Head of the Legal Advice Department and Treaty Office of the Council of Europe, notes that within the Council framework "[t]here have been instances where States have approached the Secretariat requesting information as to whether and how existing reservations could be modified. In its replies the Secretariat has always stressed that modifications which would result in an extension of the scope of existing reservations are not acceptable. Here the same reasoning applies as in the case of belated reservations ... Allowing such modifications would create a dangerous precedent which would jeopardize legal certainty and impair the uniform implementation of European treaties".[63]

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[60] See commentary, ibid., pp. 493-495. The Special Rapporteur is still dissatisfied with the use of the word "objection" to refer to the opposition expressed by a contracting party to the late formulation of a reservation (see ibid., footnote 1176).

[61] Cf. article 39 of the 1969 and 1986 Vienna Conventions.

[62] *Modern Treaty Law and Practice*, Cambridge University Press, 2000, p. 130. See also Jörg Polakiewicz, *Treaty-Making in the Council of Europe*, Council of Europe Publishing, 1999, p. 96, and, for a contrary opinion, Pierre-Henri Imbert, *Les réserves aux traités multilatéraux*, Paris, Pedone, 1979, p. 293.

[63] *Treaty-Making in the Council of Europe*, Council of Europe Publishing, 1999, p. 96. This is comparable to the position taken by the European Commission of Human Rights in the case of *Chrysostomos et al. v. Turkey* (decision of 4 March 1991, applications Nos. 15299/89, 15300/89 and 15318/89, *R.U.D.H.* 1991, p. 193.

40. The same author questions whether a State may denounce a treaty to which it has made reservations in order to ratify it subsequently with enlarged reservations. He feels that such a procedure may constitute an abuse of rights, while admittedly basing his arguments on grounds specific to the Council of Europe conventions.[64]

41. On the universal level, however, such a conclusion is undoubtedly too rigid. In any case, regardless of the answer to that question, it would not prevent the alignment of practice in the matter of enlarging the scope of reservations with that regarding late formulation of reservations,[65] which appears to be a very logical approach.

42. Depositaries treat "enlarging modifications" in the same way as late reservations. Faced with such a request by one of the parties, they consult all the other parties and accept the new formulation of the reservation only if none of the parties opposes it within the time limit set in which to respond.

43. For example, Finland on 1 April 1985, upon acceding to the 1993 Protocol on Road Markings, additional to the European Agreement supplementing the Convention on Road Signs and Signals of 1968, formulated a reservation to a technical provision of the instrument.[66] Ten years later, on 5 September 1995, Finland declared that its reservation also applied to a situation other than that originally mentioned:[67]

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[64] Ibid. One can interpret in this sense the Swiss Federal Court decision of 17 December 1992 in the case of *Elisabeth B. v. Council of State of Thurgau Canton*, (*Journal des Tribunaux*, vol. I: *Droit Fédéral*, 1995, pp. 523-537); see the seventh report on reservations to treaties, A/CN.4/526/Add.3, paras. 199-200. On the same point, see J.-F. Flauss, "Le contentieux de la validité des réserves à la CEDH devant le Tribunal fédéral suisse: *Requiem* pour la déclaration interprétative relative a l'article 6, § 1", *R.U.D.H.* 1993, p. 303. In this regard, one might note that on 26 May 1998, Trinidad and Tobago denounced the Optional Protocol and ratified it again the same day with a new reservation (*Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2002* (United Nations publication, Sales No. E.03.V.3 (hereinafter *Multilateral Treaties ...*), vol. I, chap. IV.5, p. 214, note 3)). After several objections and a decision by the Human Rights Committee dated 31 December 1999 (Communication No. 845/1999, CCPR/C/67/D/845/1999 — see the fifth report on reservations to treaties, A/CN.4/508, para. 12), Trinidad and Tobago again denounced the Protocol on 27 March 2000 (*Multilateral Treaties* ..., ibid.). What was involved, however, was not the modification of an existing reservation but the formulation of an entirely new reservation.

[65] G. Gaja gives the example of the "correction" by France on 11 August 1982 of the reservation formulated in its instrument of approval of the 1978 Protocol to the International Convention of 1973 for the Prevention of Pollution from Ships (MARPOL), which it deposited with the Secretary-General of the International Maritime Organization on 25 September 1981 ("Unruly Treaty Reservations", *Le droit international à l'heure de sa codification — Études en l'honneur de Roberto Ago*, Giuffrè, Milan, 1987, vol. I, pp. 311-312). This is a somewhat unusual case, since at the time of the "correction" the MARPOL Protocol had not yet entered into force with respect to France; in this instance the depositary does not appear to have made acceptance of the new wording dependent on the unanimous consent of the other parties, some of whom did in fact object to the modified reservation (see *Status of Multilateral Conventions and Instruments in Respect of Which the International Maritime Organization or Its Secretary-General Performs Depositary or Other Functions as at 31 December 1999*, IJ/7339, p. 77.

[66] In its original reservation with respect to paragraph 6 of the annex, Finland reserved "the right to use yellow colour for the continuous line between the opposite directions of traffic" (*Multilateral Treaties* ..., vol. I, XI.B.25, p. 793).

[67] "... the reservation made by Finland also applies to the barrier line" (ibid.).

> "In keeping with the practice followed in similar cases, the Secretary-General proposed to receive the modification in question for deposit in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged. None of the Contracting Parties to the Protocol having notified the Secretary-General of an objection within a period of 90 days from the date of its circulation (on 20 December 1995), the said modification was accepted for deposit upon the expiration of the above-stipulated 90-day period, that is, on 19 March 1996."[68]

The procedure followed by the Secretary-General is the same as the one currently followed in the case of late formulation of reservations[69] — except that now the time limit envisaged would be 12 months rather than 90 days.[70]

44. As another example, the Government of Maldives notified the United Nations Secretary-General on 29 January 1999 that it wished to modify the reservations it had formulated upon acceding to the Convention on the Elimination of All Forms of Discrimination against Women in 1993. Germany, which had objected to the original reservations, also opposed their modification, arguing, among other things, that:

> "... reservations to treaties can only be made by a State when signing, ratifying, accepting, approving or acceding to a treaty (article 19 of the Vienna Convention on the Law of Treaties). After a State has bound itself to a treaty under international law it can no longer submit new reservations or extend or add to old reservations. It is only possible to totally or partially withdraw original reservations, something unfortunately not done by the Government of the Republic of the Maldives with its modification."[71]

45. However, just as it did not object to the formulation of the original reservation by Maldives in opposing its entry into force as between the two States, so Germany did not formally oppose the modification as such. This reinforces the doubts of the Special Rapporteur as to the advisability of using the term "objection" to refer to the opposition of States to late modification of reservations. A State might well find the modification **procedure** acceptable while objecting to the **content** of the modified reservation.[72] Since, however, contrary to his advice, the Commission decided to retain the word "objection" to refer to the opposition of States to late formulation of reservations in draft guidelines 2.3.2 and 2.3.3,[73] he will refrain from suggesting a different terminology at this point.

46. Since enlargement of the scope of a reservation can be viewed as late formulation of a reservation, it seems inevitable that the same rules should apply. It

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[68] Ibid., note 3, p. 794.

[69] See the fifth report on reservations to treaties, A/CN.4/508/Add.3, paras. 297-298, or the commentary on draft guideline 2.3.1, "Late formulation of a reservation", in the report of the International Law Commission on its fifty-third session, *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), chap. VI.C.2.3, paras. (11) and (13), pp. 484-485.

[70] Cf. fifth report, A/CN.4/508/Add.4, paras. 319-323.

[71] See *Multilateral Treaties* ..., vol. I, chap. IV.8, footnote 42, p. 253. For Germany's original objection, see p. 240. Finland also objected to the modified Maldivian reservation, ibid., p. 238. The German and Finnish objections were made more than 90 days after the notification of the modification, the time limit set at that time by the Secretary-General.

[72] See footnote 60, supra.

[73] See the text of these draft guidelines in paragraph 35, supra.

is sufficient simply to refer to the relevant guidelines already adopted by the Commission. Draft guidelines 2.3.5 could then read as follows:

"2.3.5 *Enlargement of the scope of a reservation*

"The modification of an existing reservation for the purpose of enlarging the scope of the reservation shall be subject to the rules applicable to late formulation of a reservation [as set forth in guidelines 2.3.1, 2.3.2 and 2.3.3]."

47. The reference in square brackets would not be necessary if, as the Special Rapporteur suggests, the above draft guideline is included under section 2.3 of the Guide to Practice, entitled "Late formulation of a reservation".

48. Moreover, it should be sufficient to explain in the commentary on this provision what is meant by "enlargement" of the scope of a reservation. If the Commission thinks otherwise, it would be possible to add to draft guideline 2.3.5 a second paragraph reading as follows:

"Enlargement of the scope of a reservation means a modification for the purpose of excluding or modifying the legal effect of certain provisions of the treaty, or of the treaty as a whole with respect to certain specific aspects in their application to the reserving State or international organization, in a broader manner than the initial reservation."

B. Withdrawal and modification of interpretative declarations

49. As with many questions relating to interpretative declarations, the question of whether States or international organizations that are parties to a treaty can withdraw or modify such declarations after the entry into force of the treaty must be framed differently depending on whether these declarations are or are not "conditional" in the sense of the definition given in draft guideline 1.2.1.[74] For ease of explanation, the issues relating to the withdrawal of interpretative declarations and conditional interpretative declarations will be distinguished from those relating to their modification.

1. Withdrawal of interpretative declarations

50. It follows from draft guideline 2.4.3 that, except where a treaty provides otherwise,[75] a "simple" interpretative declaration "may be formulated at any time". It may, of course, be inferred therefrom that such a declaration may also be withdrawn at any time without any special procedure.

51. While States seldom withdraw their interpretative declarations, this does happen occasionally. On 1 March 1990, for instance, the Government of Italy notified the Secretary-General that "it had decided to withdraw the declaration by

[74] "A unilateral statement formulated by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or international organization subjects its consent to be bound by the treaty to a specific interpretation of the treaty or of certain provisions thereof, shall constitute a conditional interpretative declaration." For the commentary on this draft guideline, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 240-249.

[75] Cf. draft guideline 2.4.6.

which the provisions of articles 17 and 18 [of the Geneva Convention relating to the Status of Refugees of 28 July 1951] were recognized by it as recommendations only".[76] Likewise, "on 20 April 2001, the Government of Finland informed the Secretary-General [of the United Nations] that it had decided to withdraw its declaration in respect of article 7 (2) made upon ratification" of the Vienna Convention on the Law of Treaties of 1969 (ratified by that country in 1977[77]).

52. It is sufficient to endorse this practice, which is compatible with the very informal nature of interpretative declarations, by adopting a guideline which could read as follows:

> "2.2.12 *Withdrawal of an interpretative declaration*
>
> Unless the treaty provides otherwise, an interpretative declaration may be withdrawn at any time following the same procedure as is used in its formulation and applied by the authorities competent for that purpose [in conformity with the provisions of guidelines 2.4.1 and 2.4.2]."

53. The question arises of whether to include the phrase in square brackets in the draft guideline. This is simply a matter of expediency; it might be deemed useful to do so in order to facilitate the use of the Guide, or it might be considered that this makes the wording needlessly cumbersome and that it is sufficient to make this reference in the commentary.

54. Conditional interpretative declarations, meanwhile, are governed insofar as their formulation is concerned by the legal regime of reservations: they must be formulated when the State or international organization expresses its consent to be bound,[78] except if none of the other contracting Parties objects to their late formulation.

55. It follows inevitably that the rules applicable to the withdrawal of conditional interpretative declarations are necessarily identical to those applying reservations in this regard, which can only strengthen the position of those members of the Commission who consider it unnecessary to devote specific draft guidelines to such declarations. The Special Rapporteur is inclined to share those views. Nevertheless, he believes that it would be premature to take a final decision in this regard as long as this "hunch" has not been verified in respect of the rules concerning the validity of both reservations and interpretative declarations.[79]

56. There is no need to dwell on this subject, however; it is probably sufficient to transpose, mutatis mutandis, to a provisional draft guideline on the withdrawal of conditional interpretative declarations the corresponding draft guidelines concerning reservations. Such a draft guideline could read as follows:

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[76] *Multilateral Treaties* ..., vol. I, chap. V.2, pp. 339-340, note 23. There are also withdrawals of "statements of non-recognition" (cf., for example, the withdrawal of the Egyptian declarations in respect of Israel concerning the International Convention on the Elimination of All Forms of Racial Discrimination of 1966 or the Single Convention on Narcotic Drugs, following the Camp David Agreement in 1980, ibid., chap. IV.2, p. 149, note 18, or chap. VI.15, p. 393, note 18), but such statements are "outside the scope of the ... Guide to Practice" (draft guideline 1.4.3).

[77] Ibid., vol. II, chap. XXIII.1, p. 302, note 13. The declaration concerned the respective powers of the President of the Republic, the Head of Government and the Minister for Foreign Affairs to conclude treaties.

[78] See draft guideline 1.2.1, footnote 74, supra.

[79] See para. 16, supra.

"2.5.13 *Withdrawal of a conditional interpretative declaration*

The withdrawal of a conditional interpretative declaration is governed by the rules applying to the withdrawal of a reservation to a treaty [given in guidelines 2.5.1 to 2.5.9]."

2. Modification of interpretative declarations

57. There would, however, be little point in extending to interpretative declarations the rules applying to the *partial* withdrawal of reservations. By definition,[80] an interpretative declaration (whether or not it is conditional) "purports to specify or clarify the meaning or scope attributed by the declarant to a treaty or to certain of its provisions". A declaration cannot be partially withdrawn: at the very most, the author may modify it or cease to make it a condition for the entry into force of the treaty.

58. The Special Rapporteur is not aware of any precedent whereby a party to a treaty has ceased to make an interpretative declaration a condition for its participation in the treaty while maintaining the declaration "simply"[81] as an interpretation. That being the case, it is probably not helpful to devote a draft guideline to this academic hypothesis — particularly since this scenario would, in reality, amount to the withdrawal of the declaration in question as a conditional interpretative declaration and it would thus be a case of withdrawal pure and simple. It will therefore be sufficient to point this out in the commentaries on draft guideline 2.5.13.

59. On the other hand, there is no question that an interpretative declaration, whether or not it is conditional, may be modified. Nevertheless, whereas in the case of reservations it is generally relatively easy to determine whether their modification may be interpreted as a partial withdrawal (the object of draft guidelines 2.5.10 and 2.5.11) or consists in enlarging their scope (the object of draft guideline 2.3.5 suggested above[82]), this is virtually impossible in the case of modifications made by States to their interpretative declarations. Some declarations can no doubt be deemed more restrictive than others (and the withdrawal of one declaration in favour of another, more restrictive, one can be considered to "enlarge" it); nevertheless, this remains very subjective and it hardly seems appropriate to adopt a draft guideline which would transpose to interpretative declarations draft guideline 2.3.5 concerning the enlargement of the scope of reservations.

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[80] Cf. draft guideline 1.2.

[81] There are, however, examples of statements specifying that interpretative declarations do not constitute reservations. See, for example, the "communication received subsequently" (the date is not given) by which the Government of France indicated that the first paragraph of the "declaration" made upon ratification of the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966 "did not purport to limit the obligations under the Convention in respect of the French Government, but only to record the latter's interpretation of article 4 of the Convention" (*Multilateral Treaties* ..., vol. I, chap. IV.2, p. 149, note 19). See also, for example, the statements by Indonesia and Malaysia concerning the declarations which accompanied their ratifications of the Convention on the International Maritime Organization of 6 March 1948, ibid., vol. II, chap. XII.1, p. 9, notes 14 and 16, or India's position with respect to the same Convention (see ibid., p. 9, note 13; see also O. Schachter, "The question of treaty reservations at the 1959 General Assembly", *American Journal of International Law*, 1960, pp. 372-379).

[82] Para. 46.

60. Consequently, there is no need to distinguish between modifications of interpretative declarations which have the effect of limiting the scope of the initial declaration or, on the contrary, enlarging it.[83] However, the distinction between conditional interpretative declarations and other interpretative declarations re-emerges in relation to the time at which a modification may be made.

61. Conditional interpretative declarations may not be modified at will: in principle, they may only be formulated (or confirmed) when a State or an international organization expresses its consent to be bound[84] and any late formulation is precluded "except if none of the other contracting Parties objects."[85] Any modification is thus similar to a late formulation which also must not be opposed by any of the other contracting Parties. A draft guideline could so specify:

"2.4.10 *Modification of a conditional interpretative declaration*

A State or an international organization may not modify a conditional interpretative declaration concerning a treaty after expressing its consent to be bound by the treaty except if none of the other contracting Parties objects to the late modification of the conditional interpretative declaration."

62. It will be noted that the wording of this draft guideline is modelled very exactly on that of draft guideline 2.4.8 concerning "Late formulation of a conditional interpretative declaration". If the Commission agrees to revise this draft guideline, adopted in 2001,[86] a more elegant solution could consist in combining the two draft guidelines in the following manner:

"2.4.8 *Late formulation <u>or modification</u> of a conditional interpretative declaration*

A State or an international organization may not formulate <u>or modify</u> a conditional interpretative declaration concerning a treaty after expressing its consent to be bound by the treaty except if none of the other contracting Parties objects to the late formulation <u>or modification</u> of the conditional interpretative declaration."

The commentaries would of course need to be amended accordingly.

63. The problem may be stated differently in the case of "simple" interpretative declarations, those which constitute mere clarifications of the meaning of the treaty provisions, but on which the author's participation in the treaty does not depend. Such declarations may be formulated at any time[87] (unless the treaty provides otherwise[88]) and are not subject to the requirement of confirmation.[89] Consequently, there is nothing to prevent such declarations from being modified at any time, in the absence of a treaty provision indicating that the interpretation must be given at a specified time. This could be the object of a draft guideline 2.4.9:

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[83] In this respect, the legal regime of conditional interpretative declarations differs from that applying to reservations.

[84] Cf. draft guidelines 1.2.1 and 2.4.5.

[85] Draft guideline 2.4.8.

[86] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), chap. VI.C.2, pp. 505-506.

[87] Cf. draft guideline 2.4.3.

[88] Cf. draft guideline 2.4.6.

[89] Cf. draft guideline 2.4.4.

"2.4.9 *Modification of interpretative declarations*

Unless the treaty provides that an interpretative declaration may be made [or modified] only at specified times, an interpretative declaration may be modified at any time."

64. The expression in square brackets envisages a fairly unlikely scenario (and one which the Special Rapporteur has not encountered), where a treaty would expressly limit the possibility of *modifying* interpretative declarations. It could no doubt be safely omitted from the text of the draft guideline and simply be mentioned in the commentary.

65. Here again, the Commission will perhaps prefer to make minor revisions to the text of draft guidelines 2.4.3 and 2.4.6 (and the commentaries thereon) adopted in 2001[90] so as to accommodate modification alongside the formulation of interpretative declarations. In that case, the two draft guidelines would read as follows:

"2.4.3 *Time at which an interpretative declaration may be formulated or modified*

Without prejudice to the provisions of guidelines 1.2.1, 2.4.6 and 2.4.7, an interpretative declaration may be formulated or modified at any time.

2.4.6 *Late formulation of an interpretative declaration*

Where a treaty provides that an interpretative declaration may be made [or modified] only at specified times, a State or an international organization may not formulate or modify an interpretative declaration concerning that treaty subsequently except if none of the other contracting Parties objects to the late formulation or modification of the interpretative declaration."

66. There are few clear examples illustrating these draft guidelines. Mention may be made, however, of the modification by Mexico, in 1987, of the declaration concerning article 16 of the International Convention against the Taking of Hostages of 17 December 1979, made upon accession in 1987.[91]

67. The modification by a State of unilateral statements made under an optional clause[92] or providing for a choice between the provisions of a treaty[93] also comes to mind; but such statements are "outside the scope of the ... Guide to Practice"[94] . Also, on 7 March 2002, Bulgaria amended a declaration made upon signature and confirmed upon deposit of its instrument of ratification (in 1994) of the European

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[90] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), chap. VI.C.2, pp. 499-501 and 503-505.

[91] See *Multilateral Treaties* ..., vol. II, chap. XVIII.5, p. 109.

[92] See, for example, the modification by Australia and New Zealand of the declarations made under article 24, para. 2 (ii), of the Agreement Establishing the Asian Development Bank upon ratification of the said Agreement (*Multilateral Treaties* ..., vol. I, chap. X.4, p. 491, notes 10 and 11)

[93] See, for example, the note by the Ambassador of Mexico to the Hague dated 24 January 2002 informing the depositary of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965 of the modification of Mexico's requirements with respect to the application of article 5 of the said Convention (www.hcch.net/e/conventions/text14e.html).

[94] Draft guidelines 1.4.6 and 1.4.7.

Convention on Mutual Assistance in Criminal Matters of 20 April 1959;[95] however, strictly speaking, it might be considered that this was more a case of interpreting a reservation than modifying an interpretative declaration.[96]

68. For all that, and despite the paucity of convincing examples (known to the Special Rapporteur), the proposed draft guidelines above seem to flow logically from the very definition of interpretative declarations.

[95] http://conventions.coe.int/Treaty/EN/CADREListeTraites.htm.

[96] See also ibid.: the modification, in 1988, of the Swiss "interpretative declaration" of 1974 concerning article 6, para. 1, of the European Convention on Human Rights following the *Belilos* judgement of 29 April 1988. However, the Court had classed this "declaration" as a reservation and Switzerland simply withdrew its declaration retroactively following the decision of the Swiss Federal Court of 17 December 1992 in the case of *Elisabeth B. v. Council of State of Thurgau Canton* (see footnote 64, supra).

Annex

Model letter addressed to the chairpersons of the human rights bodies

13 August 2002

Sir/Madam,

In 1997, the International Law Commission adopted preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties. A copy of the text is attached herewith.

The Commission intends to resume its consideration of this topic and adopt final conclusions, probably during its fifty-fifth or fifty-sixth session in 2003 or 2004. We are therefore contacting you again to propose the fullest possible cooperation between the Committee over which you preside and the Commission so that we might hold an exchange of views.

It would thus be particularly appropriate for all the bodies concerned (to the Chairpersons of which we are addressing a letter similar to this one)* and the Commission or their representatives, to hold one or more joint meetings, preferably at the Commission's next season, which is scheduled from 5 May to 6 June and from 7 July to 8 August 2003. We would be pleased to hear your reaction and that of the body over which you preside as soon as possible.

The International Law Commission is open to any suggestions you might wish to make on the topic covered by the 1997 preliminary conclusions, and we are available to provide any information or clarifications that you or your colleagues might wish to request.

We thank you in advance for your response to this letter.

Accept, Sir/Madam, the assurances of our highest consideration.

(*Signed*) Robert **Rosenstock**
Chairman
International Law Commission

(*Signed*) Alain **Pellet**
Special Rapporteur on reservations to treaties

Mr. Ion Diaconou
Chairperson
Committee on the Elimination of Racial Discrimination
Geneva

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* Subcommission on the Promotion and Protection of Human Rights, Human Rights Committee, Committee on the Elimination of Racial Discrimination, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Discrimination against Women, Committee against Torture, Committee on the Rights of the Child.